

STATE OF DELAWARE



Department of Finance

Carvel State Office Building, 8th Floor
820 N. French Street
Wilmington, DE 19801

Request For Proposals for Bond Counsel Services and Underwriters' Counsel Services

Bid Number: 04132009BC

Bid Closing: April 30, 2009; 3:00 p.m. EST

RFP: Request for Proposals for Bond Counsel Services and Underwriters' Counsel Services

Page 1 of 13

**REQUEST FOR PROPOSALS TO PROVIDE
BOND COUNSEL SERVICES AND
UNDERWRITERS' COUNSEL SERVICES
ISSUED BY THE STATE OF DELAWARE**

Executive Summary

The State of Delaware (“State”) seeks firms interested in providing legal services to fill the separate roles of Bond Counsel and Underwriters’ Counsel. Bond Counsel will be expected to serve the Department of Finance of the State of Delaware on behalf of the State’s Bond Issuing Officers as well as the Delaware State Housing Authority, the Delaware Solid Waste Authority, the Delaware Transportation Authority and The Delaware Economic Development Authority (collectively referred to as the “Issuers”). Underwriters’ Counsel will be expected to represent underwriters in certain of the State’s negotiated debt offerings. The State intends to provide a pool of pre-qualified firms for use by underwriters in negotiated offerings for refundings and retail bond sales. The State will only consider proposals from experienced counsel with demonstrated expertise in those areas of law pertinent to the work being performed and, specifically for the role of Underwriters’ Counsel.

The State anticipates that, after conducting interviews, it will select at least one firm to act on behalf of the State as its Bond Counsel. Additionally, the State intends to establish a pool of pre-qualified firms for use by underwriters in negotiated offerings for refundings and retail bond sales. The State reserves the right to award multiple contracts if it determines that such an award is in the best interest of the State.

This RFP will define the scope of the work to be performed, the requirements the vendor (“Vendor”) must address, the method for response and the administrative requirements that must be followed. The State will advise potential Vendors of changes to any dates as may be necessary. The State also reserves the right to modify and/or cancel this solicitation at any time during the RFP process.

RFP Schedule

ID	Date/Time	Activity
1	April 13, 2009	Request for Proposal issued, First Public Notice posted and posted on Department of Finance and Attorney General's websites.
2	April 20, 2009	Second Public Notice posted
3	April 23, 2009	All Vendor questions regarding RFP are due
4	April 27, 2009	State issues answers to questions regarding the RFP via Department of Finance website at http://www.state.de.us/finance and Attorney General's website at http://attorneygeneral.delaware.gov
5	April. 30, 2009; 3:00 p.m. EST	RFP Response due date
4	May 18, 2009	Begin Vendor Interviews (subject to change)
5	June 1, 2009	Begin Negotiations (subject to change)
6	June 30, 2009	Contract awarded (subject to change)

All interested firms should submit an original and 12 bound copies of their proposals ("Proposal") to the contact person. Proposals may be mailed or hand-delivered for receipt no later than 3:00 p.m. EST on April 30, 2009 ("Closing Date"). All timely Proposals become the property of the State. Requests for extensions of the Closing Date will not be granted. Any Proposal, request for modification, or request for withdrawal received after 3:00 p.m. on the Closing Date is late and may not be considered. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), U.S. Mail, or by hand. Proposals shall be submitted to:

State of Delaware
Department of Finance
ATTN: Stephanie M. Scola,
Department of Finance, 8th Floor
Carvel State Office Building
820 N. French Street
Wilmington, DE 19801

Each proposal must be accompanied by a transmittal letter, which briefly summarizes the proposing firm's interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP, which the applicant may have taken in presenting the Proposal. The State reserves the right to deny any and all exceptions taken to the RFP requirements.

The cost of preparing Proposals will be borne solely by the offerors. Proposals shall address all the questions posed by the Issuers in the order in which they appear in this request.

RFP: Request for Proposals for Bond Counsel Services and Underwriters' Counsel Services

RFP Designated Contact:

Please submit all questions and requests for information to:

Cynthia L. Collins
Deputy Attorney General
Carvel State Building
820 N. French Street, 6th Floor
Wilmington, Delaware 19801

Direct Dial: (302) 577-8405

Fax: (302) 577-6630

Email: Cynthia.Collins@state.de.us

All questions submitted, along with answers will be consolidated into a single Q&A document. The source of the questions will not be disclosed in the document. The Q&A document will be posted on the Department of Finance's website at <http://www.state.de.us/finance> and the Attorney General's website at <http://attorneygeneral.delaware.gov>.

1.0 GENERAL INFORMATION

1.01 Project Scope and Objectives

A. Bond Counsel

This RFP seeks to retain the services of Bond Counsel. Bond Counsel shall provide the following services concerning financial matters to the State on a continuing basis throughout the period of this engagement. Such legal services shall include, but not be limited to, rendering objective legal opinions, as well as advice and research in the following areas:

- 1) Advising and assisting the State and its Issuers in developing and structuring procedures to issue tax-exempt bonds, revenue bonds, qualified private activity, qualified zone academy bonds, bond anticipation notes and any and all other debt obligations issued by the State or its Issuers in accordance with applicable laws, customs and practices governing the issuance of municipal bonds, including but not limited to opinions on tax matters pertaining to uses of proceeds of bonds, ability to refund previous bond issues, tax exemptions, arbitrage compliance, private activity use and alternative financing vehicles.
- 2) Providing an objective legal opinion with respect to the validity and security of any debt obligations and whether and to what extent interest on the obligations is exempt from income and other taxation under federal and/or state laws and regulations.
- 3) Examining applicable law; preparing authorizing documents; consulting with parties to the transaction; reviewing proceedings and performing additional duties as necessary to render an opinion.
- 4) Preparing legal documents for the financing process, including closing documents and transcripts.
- 5) Developing legal documentation for the execution of the Preliminary Official Statement, Official Statement, tax opinions on exemptions, redemption notices, notices of sale, resolutions of issuing officers and opinions on the sale.

- 6) Help in the selection of electronic bid providers for the electronic sale of the bonds, vendors for the printing and distribution of Preliminary Official Statements and Official Statements depository trust and insurance providers.
- 7) Advise and provide opinion on issues pertaining to the use of private activity bond allocations and tax-exempt vehicles, such as 501(c)(3) status.
- 8) Providing opinions on the use and execution of general obligation, revenue bonds, single and multi-family revenue bonds, bond anticipation notes, revenue anticipation notes, defeasances, current and advance refundings, commercial paper and other alternative debt vehicles to facilitate state services.
- 9) Preparing and filing all documents and materials necessary to comply with all applicable “continuing disclosure” requirements for transactions and coordinating activities with underwriters’ counsel, if any.
- 10) Providing continuing advice regarding any actions necessary to ensure that interest continues to be tax-exempt.
11. Participating, when requested, in activities associated with rating agency and/or bond insurer reviews.
- 12) Drafting and analyzing legislation related to the sale of obligations by the State or any Issuer or pertaining to the validity and security of the debt obligations.
- 13) Offering continuing legal advice and counsel, as needed, on issues related to the sale and the administration of State obligations.
- 14) Providing other legal opinions as required.
- 15) Advising the State on debt management policy, as requested.

B. Underwriters’ Counsel

This RFP intends to created a qualified pool of Underwriters’ Counsel. In order for the State and its Issuers to facilitate the selection of competent and independent underwriters’ counsel,

qualified legal firms will be selected to represent underwriters chosen by the State via an RFP process to negotiate an offering of bonds and will be expected to provide the usual and customary services to such an underwriter to ensure adequate disclosure. Legal services associated with acting as Underwriters' Counsel shall include, but not be limited to, the following:

- 1) Assist the underwriter in meeting its legal responsibilities with regard to the issuance and sale of Issuer's bonds.
- 2) Assist Bond Counsel with the review and/or drafting of disclosure documents including the Official Statement and Preliminary Official Statement.
- 3) Assist Bond Counsel in the preparation of all documents and materials necessary to comply with all applicable "continuing disclosure" requirements for transactions.
- 4) Review and/or draft required bond purchase agreements and/or selling group agreements.
- 5) Perform due diligence reviews.
- 6) Review relevant tax and disclosure issues.

1.02 Reporting

Selected Bond Counsel and Underwriters' Counsel will work closely with the Department of Finance and the Deputy Attorney General ("DAG") assigned to assist the State in these matters.

2.0 MINIMUM REQUIRED QUALIFICATIONS

2.01 Experience and Reputation

- A. The law firm must have been in business at least five years;
- B. The law firm should have at least five (5) or more year's prior experience in representing states, or other governmental agencies as bond counsel and/or underwriter's counsel;
- C. The law firm should be listed in the current edition of The Bond Buyer's Municipal Marketplace ("RED Book") as Bond Counsel and/or Underwriters' Counsel; and.

- D. The law firm must designate a lead attorney licensed to practice law with five (5) or more years experience acting as Bond Counsel and/or Underwriter's Counsel

2.02 Professional Liability Insurance

The Vendor shall agree to maintain in full force and effect during the term of the Contract professional liability insurance in an aggregate amount of not less than \$2 million. In order to satisfy this requirement, the Vendor must:

- A. Include a statement in its Proposal affirmatively responding to this requirement; and
- B. Include in its Proposal either:
 - 1) A certificate of insurance or letter from its insurer demonstrating that the Vendor meets this requirement, or
 - 2) A commitment letter or other evidence, satisfactory to the Procurement Officer, that Vendor will have such coverage as of the date the Contract commences.

If the Vendor is a joint venture, and one party of the joint venture does not presently have such liability insurance, this requirement may be satisfied if the members of the joint venture include in their proposal evidence, satisfactory to the Procurement Officer, that all members of the joint venture will have such coverage as of the date the Contract commences, either through actual insurance policies or an indemnity agreement by the properly insured firm, in form and substance acceptable to the State

2.03 Vendor's Capacity

Each Vendor must demonstrate the capacity to perform the type of services needed by the State described in Section 1.01 above. The Vendor must be available at all times to render services required under the Contract.

3.0 TECHNICAL PROPOSAL FORMAT

The following information shall be provided in each proposal in the order listed below. A Vendor is expected to provide a response for each requirement listed in this RFP. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of the State.

3.01 General

All technical proposals shall be prepared with a concise description of the Vendor's capabilities to satisfy the minimum qualifications of Section 2 above and the

RFP: Request for Proposals for Bond Counsel Services and Underwriters' Counsel Services

information requested under Section 3 below. Vendors should organize their proposals so that their responses correspond to the specific subsections to the extent possible without unnecessary repetition.

3.02 Required Information

The proposal shall contain the information described below. Joint ventures should provide the information separately for each firm.

A. Vendor's Prior Experience

1. General Information:

- (i) Within the past three years, have there been any significant developments in your firm such as changes in ownership or restructuring? Do you anticipate any significant changes in the future? Please describe.
- (ii) Has your firm or an attorney in your firm's employ even been disciplined or censured by any regulatory body? If so, describe the principal facts.
- (iii) Within the last five years, has your firm, or a partner or attorney in your firm, been involved in litigation or other legal proceedings relating to provision of legal services? If so, provide an explanation and indicate the current status or disposition.
- (iv) Please describe your firm's backup procedures in the event one or more attorneys assigned to State leave the firm. Identify the key attorney who will be the primary contact and lead counsel in providing services to State, whose continuing status as such is an essential element of this contract.

2. Bond Experience:

- (i) Provide a comprehensive list of all deals where the Vendor has acted as Bond Counsel to a State in Bond Offering during the last five (5) years.
- (ii) Provide a brief description for two of the transactions listed above.

- (iii) Provide a comprehensive list of all deals where your firm participated in a Bond Offering for a State, but you did not act as Bond Counsel during the last five (5) years.
- (iv) Provide a brief description for two of the transactions listed above.
- (v) Provide a comprehensive list of deals where your firm participated as Bond Counsel in a Bond Offering for a municipality or other governmental instrumentality during the last five (5) years.
- (vi) Provide a brief description for two of the transactions listed above.
- (vii) Provide a brief description of areas of the law related to the purpose of this RFP in which the Vendor has an expertise, including, but not limited to, administrative law, and contract law.

3. Underwriters' Counsel

- (i) Provide a comprehensive list of deals where the Vendor acted as Underwriters' Counsel to a State in a Bond Offering during the last five (5) years.
- (ii) Provide a brief description for two of the transactions listed above.
- (iii) Provide a comprehensive list of deals where your firm participated as Underwriters' Counsel in a Bond Offering for a municipality or other governmental instrumentality during the last five (5) years.
- (iv) Provide a brief description for two of the transactions listed above.
- (v) Provide a brief description of areas of the law related to the purpose of this RFP in which the Vendor has an expertise, including, but not limited to, administrative law, and contract law.

- B. Conflicts of Interest.
 - 1. In general. If a conflict of interest arises, the Vendor should be willing to continue to represent the State and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. The Attorney General may entertain a request for a waiver of a Vendor's representation of a party in litigation involving a unit of State government other than the Issuers, but does not expect to waive any other conflicts. The State reserves the right, in its sole discretion, to select another approved law firm to work on a particular matter if a conflict is not resolved to its satisfaction.
 - 2. Each Vendor shall identify any conflicts of interest which may arise if the Vendor serves as Bond Counsel and/or Underwriter's Counsel. The Vendor shall describe in its Proposal how it proposes to deal with such conflicts. Conflicts may arise not only from attorneys names on the contract but also from representation of parties involved in the transactions or other matters involving the State by any member of the firm, regardless of whether that attorney is in the same office or a different office of the firm.

4.0 PRICE PROPOSAL FORMAT

4.01 Billing Rates

- A. Current billing Rates for all attorneys assigned to represent the State pursuant to this RFP;
- B. Current billing Rates for all para-professionals assigned to represent the State pursuant to this RFP; and
- C. No compensation will be permitted for the services of law clerks and law school graduates not admitted to practice.

4.02 Alternative Pricing Proposals

Although each Vendor is required to submit a price proposal containing the information set forth in Part 4.0, the State will also accept proposals for alternative billing arrangements, which enhance the value and efficiency of the services to be provided. The Vendor may submit a statement, not more than one page in length, with respect to any alternative pricing proposal.

5.0 EVALUATION OF PROPOSALS

The selection committee shall evaluate the proposals. During the evaluation process the selection committee may, at its discretion, request any or all firms to make oral presentations or participate in a formal interview. Such presentation or interviews will provide firms with an opportunity to answer questions about a firm's Proposal. Not all firms may be asked to make an oral presentation or to attend an interview.

5.01 Selection Criteria

The selection of the firm to provide legal services will be based on an evaluation of the Proposals to determine which Proposal reflects the best value to the State, with technical factors generally being considered more important than cost of services. The selection of the firm to provide legal services will be based upon the following technical factors in descending order of importance.

- A. Experience of the firm and the individual attorneys representing governmental entities as bond counsel in the issuance of governmental bonds and debt instruments;
- B. Experience with or knowledge of the firm and individual attorneys representing governmental entities as underwriters' counsel in the issuance of governmental bonds and debt instruments;
- C. Administrative structure of representation (i.e., proposed staffing assignments), soundness of approach to representation and understanding of the needs of the State;
- D. Demonstrated ability to perform the services referred to under Project Scope and Objectives; and
- E. References and recommendations of other clients.

5.02 Contract Negotiation

The State intends on opening negotiations with Vendors that the State determines have a reasonable likelihood of being awarded a contract based on the proposals that are submitted. Negotiations will focus on any technical weaknesses or deficiencies in proposals as well as cost and pricing issues.

A written contract with each of the selected law firms will be required. Each contract must be approved by the Attorney General of the State of Delaware and the Governor of the State of Delaware pursuant to *29 Del. C. § 2507*

5.03 Contract Award

The State reserves the right to award all, part, or none of this contract. The State intends to award contracts to more than one law firm if deemed appropriate and desirable.